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SECRETSHORT DISCUSSION OF DCI'S RESPONSIBILITY
AND AUTHORITY TO PROTECT AGENCY RECORDS

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there must be considered the over-all separation of powers of the Federal Government into three Branches, the Executive, the Legislative and the Judicial. Since the Agency is a part of the Executive Branch of the Government, unwarranted demands for records by other parts of the Executive Branch would simply be refused by the DCI. There is simply no authority in the other parts of the Executive to compel production of records by the DCI. Presumably a legitimate dispute would be handled internally within the Executive Branch. Possibly the procedure would be discussed in the Intelligence Advisory Committee; the next appeal being to the National Security Council, and final decision by the President. Such a situation would appear extremely unlikely to develop.

3. It has been ruled by the Attorney General that the head of a department has full charge and control of all the records and papers belonging to his department. So long as his action is not inconsistent with law, he may prescribe whatever rules and regulations he may deem proper regarding their use and custody. His broad discretion necessarily includes the right to determine whether certain documents should or should not be taken from the files of a department. The opinion further states that the records of a department are Executive documents and must be classed as privileged communications whose production cannot be compelled by a court. That opinion of the Attorney General has been cited with approval in one of the Federal Circuit Courts of Appeal. The statute authorizing the head of a department to promulgate such rules and regulations has been considered by the Supreme Court in two cases. In one case the Supreme Court upheld a Special Agent of the Department of Justice in his refusal to produce records under subpoena in a court proceeding where he was barred from so doing by a regulation issued by the Attorney General. In the other

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case the Supreme Court affirmed the judgment of the District Court discharging United States Internal Revenue Collectors from the custody of the sheriff of Kenton County, Kentucky, who had arrested them. A subpoena had been issued directing the Collectors to appear in court and produce the records, and they declined on the ground that they were prohibited from so doing by regulations of the Treasury Department.

4. In other Supreme Court cases the division of powers of the three Branches of the Federal Government has been stated. An excerpt from *Kilbourn v. Thompson* (103 U. S. 168, 190) states this in a very clear manner:

"It is believed to be one of the chief merits of the American system of written constitutional law, that all the powers entrusted to government, whether State or national, are divided into the three grant departments, the executive, the legislative, and the judicial. That the functions appropriate to each of these branches of government shall be vested in a separate body of public servants, and that the perfection of the system requires that the lines which separate and divide these departments shall be broadly and clearly defined. It is also essential to the successful working of this system that the persons entrusted with power in any one of these branches shall not be permitted to encroach upon the powers confided to the others, but that each shall by the law of its creation be limited to the exercise of the powers appropriate to its own department and no other."

5. Also there has been stated in court opinion that the Executive Department being a coordinate branch of the Government has power to judge what should or should not be done within its own Department and what of its doings and communications should or should not be kept secret. Further, in the exercise of these Constitutional powers the courts have no more right to interfere than has the Executive under like conditions to interfere with the courts.

6. With respect to the right of Congress to demand papers and records deemed confidential by the Executive, the Executive Branch historically has asserted the right to refuse requests by the Congress for confidential papers which the President or the heads of departments felt obligated to withhold in the public interest. The courts have uniformly held that they will not compel the President or head of a department to give testimony or to produce papers which required secrecy. Therefore, the long continued practice of the Executive Branch of withholding confidential papers in the

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national interest from the Legislative Branch, and the passage of no law to the contrary by Congress, is tantamount to the recognition of such a power by the Executive under the Constitution. Further, it can be assumed that the United States Supreme Court cannot ignore more than one hundred and fifty years of legislative acquiescence in the assertion of such power by the Executive Branch.

7. The above is intended only as a short and general summary of the status of the law in the United States with respect to the problem. It readily can be seen that such status is based upon the Constitutional arrangement of the American Government and a history of actions by the three Branches of the Government based on powers granted those Branches under the Constitution. While legislation possibly would assist [REDACTED] it is apparent that the protection afforded the records of this Agency is based on far more than legislation and takes into account the fundamental foundations of the American system of Government.

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